

**REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

**Status of Claims:**

Claims 5 and 19 are currently being cancelled, whereby the features of now-cancelled claim 5 have been incorporated into presently pending independent claim 1 and whereby the features of now-cancelled claim 19 have been incorporated into presently pending independent claim 15.

Claims 1, 2, 6, 8, 11, 15, 20 and 25-28 are currently being amended.

No claims are currently being added.

This amendment amends and cancels claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-4, 6-18 and 20-28 are now pending in this application.

**Indication of Allowable Subject Matter:**

Applicant appreciates the indication of allowable subject matter made in the Office Action with respect to claims 5-14 and 19-28. By way of this amendment and reply, presently pending independent claim 1 has been amended to include the features of "objected to" claim 5, as well as to include an "installing" step and a "running" step (on a computer system) that provide the basis for overcoming the 35 U.S.C. § 101 rejection of claims 1-14, and thus claim 1 is now in condition for allowance. Claims 2-4, 6, 7 and 12-14 depend either directly or indirectly from claim 1, and thus those claims are also in condition for allowance.

Similarly, "objected to" claims 8 and 11 have each been amended to place those claims in independent form to include the features of claim 1 (with the "installing" step and the "running" step added) as well as any intervening claims. Thus, claims 8-11 (claims 9 and 10 depend either directly or indirectly from claim 8) are now in condition for allowance.

Presently pending independent claim 15 has been amended to include the features of “objected to” claim 19, and thus claim 15 is now in condition for allowance. Similarly, “objected to” claims 25-28 have each been amended to place those claims in independent form to include the features of claim 15 as well as any intervening claims. Thus, claims 15-28 (claims 16-18 and 20-24 depend either directly or indirectly from claim 15) are now in condition for allowance.

**Comments Concerning Objection to Drawings:**

In the previously-filed response, Applicant had amended the drawings to include a “Prior Art” label, while arguing that Figures 2, 3, 4 and 15 do not depict any prior art method of patch selection and evaluation. To expedite prosecution, Applicant’s will not press this argument any further, although it is noted that Figures 2, 3, 4 and 15 should be interpreted solely based on the description of those figures in the “Description of the Related Art” section of the specification, and any features discussed with respect to those figures in the “Detailed Description” section of the specification are not to be construed as being disclosed in those figures.

**35 U.S.C. § 101 Rejection of Claims 1-14:**

In the Office Action, claims 1-14 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter, since claim 1 allegedly “does not appear to recite any transformation of data from one state to another because the recited steps are merely searching, examining, and presenting patches.” By way of this amendment and reply, claim 1 (and also claims 8 and 11) has been amended to explicitly recite an installing step and a running step (on a computer system), whereby those steps provide for transformation of data by nature of the computer system operating on the patch. Accordingly, claims 1-4 and 6-14 fully comply with 35 U.S.C. § 101.

**Claim Rejections – Prior Art:**

In the Office Action, claims 1-4 and 15-18 were rejected under 35 U.S.C. § 102(a) as being anticipated by Applicant’s Admitted Prior Art of Figures 2-4, 15 and pages 1-4 of Applicant’s background. Due to the amendment made to claim 1 so that it now includes the

features of "objected to" claim 5, and due to the amendment made to claim 15 so that it now includes the features of "objected to" claim 19, these rejections are now moot.

**Conclusion:**

Since all of the issues raised in the Office Action have been addressed in this Amendment and Reply, Applicant believes that the present application is now in condition for allowance, and an early indication of allowance is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date September 6, 2005

By Phillip J. Articola

FOLEY & LARDNER LLP  
Customer Number: 22879  
Telephone: (202) 672-5485  
Facsimile: (202) 672-5399

William T. Ellis  
Registration No. 26,874

Phillip J. Articola  
Registration No. 38,819